substantially the same as the car written off) awarded the plaintiff $5,000 damages under this head. The chief magistrate ordered that the second defendant should pay the plaintiff the sum of $6,200 (and costs of $800); and he further ordered that the third party should pay the second defendant the sum awarded to the plaintiff (and further costs of $400). From this decision, the third party now appeals.

The case for the appellant is simply that the proper measure of the plaintiff's damages was the market value of the plaintiff's car at the date of the accident. The appellant says it was for the plaintiff to prove at the trial what the market value was, and that the plaintiff failed to do so.

I accept these submissions. Firstly, there can be no doubt that, when a motor car is destroyed in an accident, the normal measure of damages is the market value of the car, ie what it would have cost to replace it, at the date of the accident. Secondly, it is the fact that there was no evidence before the chief magistrate of the market value of the car at the date of the accident. There was evidence on the basis of which he could properly find or assume that the purchase price of the car was $20,000. There was evidence that the plaintiff's insurers had raised no objection to the plaintiff's estimate of the value of the car, at the date of his proposal for insurance, at $20,000. There was evidence that, in accordance with their agreement with the plaintiff, the plaintiff's insurers treated the value of the car, for the purposes of the claim, as $15,000, (something which, as between himself and his insurers, the plaintiff had under the policy no option but to accept). But none of this, as it seems to me, is evidence of the market value of the car as at the date of the accident.

In these circumstances, it seems to me that the chief magistrate approached the matter incorrectly, and that his reasoning cannot be supported. The plaintiff could have succeeded under this head of claim only by proving that the market value of the car at the date of the accident exceeded $15,000; and this he failed to do. He might have proved that he could have replaced the car only by buying a brand-new one, in which case he might have got damages on that basis: see *Moore & Anor* v *DER Ltd.*[1] But he did not do so.

In these circumstances, in my judgment, this appeal succeeds and the order of the chief magistrate must be varied so as to give the plaintiff $1,200 instead of $6,200 by way of damages. The defendants and the third party do not ask me to vary the orders of the chief magistrate as to costs.

Order accordingly.

Solicitors: *Choo Chan & Wong*; *DF Abang Zen*; *Bonds*.

Reported by *Walter Woon*

MALAYSIAN REPORTS

Ng Ngat Siang v Arab-Malaysian Finance Bhd & Anor

HIGH COURT (KUALA LUMPUR) – ORIGINATING SUMMONS NO D2-31-58-87
SITI NORMA YAAKOB J
29 AUGUST 1988

Sale of Goods – Better title to car purchased from registered owner – Dispute on – Sale of car to plaintiff by registered owner but no handing over of registration card – Car subsequently sold by registered owner to first defendant – Whether plaintiff had acquired ownership before second sale – Plaintiff allowing possession of car and registration card by registered owner after sale – Whether first defendant can plead estoppel by negligence against plaintiff – First defendant a bona fide purchaser for value without notice – Whether relevant – Sale of Goods Act 1957, s 27

The plaintiff bought a car from the second defendant. To effect the transfer of ownership of the car into the plaintiff's name, the second defendant had to pay off MUI Finance which had originally financed the second defendant's purchase of the car under a hire-purchase agreement executed by the second defendant with MUI Finance. For this purpose, the second defendant retained possession of the registration card. However, after settling the balance due to MUI Finance and obtaining the endorsement of MUI's ownership in the registration card cancelled, the second defendant did not return the registration card to the plaintiff but instead sold the car to B. B's purchase was financed by the first defendant. As such, an endorsement was inserted in the registration card that ownership was claimed by the first defendant.

The plaintiff applied to the court, via originating summons, for a determination as to whether he or the first defendant had a better title over the car as both had purchased it from the registered owner, the second defendant. The first defendant had pleaded estoppel by negligence against the plaintiff by alleging that the plaintiff had been negligent in allowing the second defendant to retain possession of both the car and the registration card thereby clothing the second defendant with the ostensible authority of ownership and by his own conduct the plaintiff is precluded from denying the second defendant's authority to sell the car to the plaintiff. Also, the first defendant contended that it is a bona fide purchaser for value without notice of the plaintiff's prior interest and that the plaintiff is estopped from denying the first defendant's title to the car.

Held, allowing the application:

(1) After full payment was made by the second defendant to MUI Finance and MUI Finance had relinquished all rights of ownership over the car, the plaintiff had acquired ownership of the car and the second defendant's further dealings on the car with the first defendant are therefore illegal. To that end, the first defendant acquired no title or interest over the car when they purchased it and their only remedy, if any, is against the second defendant personally for the return of the purchase price but as against the plaintiff they cannot claim any right of ownership over the car.

(2) The failure of the second defendant to return the registration card to the plaintiff should not be taken against the plaintiff as the plaintiff had made every effort to get it back

from the second defendant. When all his efforts failed, he even lodged a police report. Thus by his own conduct, the plaintiff had not shown that he had been in any way negligent in allowing the second defendant to retain possession of the registration card after he had purchased the car.

(3) The first defendant have only themselves to blame for the loss suffered when they parted with the purchase price and that being purchasers for value without notice is of no relevance to the facts of this case.

Cases referred to

1 *Butterworth* v *Kingsway Motors Ltd* [1954] 2 All ER 694 (folld)
2 *Central Newbury Car Auctions Ltd* v *Unity Finance Ltd & Anor* [1956] 3 All ER 905 (folld)
3 *PP* v *Europe Motors Sdn Bhd* [1981] 2 MLJ 93 (folld)

Legislation referred to

Evidence Act 1950 s 114(g)
Sale of Goods Act 1957 ss 20, 27

MS Murthi for the plaintiff.
FT Yip for the first defendant.

Cur Adv Vult

Siti Norma Yaakob J: The subject matter in dispute in this originating summons is a Honda Accord motor vehicle, bearing registration number MP228, over which ownership is claimed by both the plaintiff and the first defendant. Both maintain that they had obtained a good title over the car as they had purchased it from the registered owner, the second defendant, who, however, has not entered any appearance to this originating summons despite having been served with all the necessary papers.

The events leading to the filing of this originating summons started when the second defendant agreed to sell the car to the plaintiff for $18,800. The plaintiff was introduced to him by a motor mechanic named Yap Kam Weng. This was sometime on 22 September 1986 and at that point of time ownership of the car was claimed by MUI Finance as they had financed the purchase of the car. Because of this, ownership of the car can only be transferred to the plaintiff, once the second defendant has settled the balance due to MUI Finance under the hire-purchase agreement executed by him with MUI Finance. It is also from the proceeds of the sale of the car to the plaintiff that the second defendant was able to settle the amount due to MUI Finance.

Following their oral agreement, the plaintiff issued a cash cheque drawn on Public Bank Bhd dated 22 September 1986 for $8,500 which was received by Yap on behalf of the second defendant. The $8,500 represented the down payment for the car, receipt for which is evidenced by an acknowledgment issued by Yap. On the same day, Yap passed the cash cheque to the second defendant and this is evidenced by a written notification titled 'cash payment voucher' dated 22 September 1986 signed by the second defendant.

The following day, 23 September 1986, the plaintiff settled the balance of the purchase price in full by issuing another cash cheque drawn on Public Bank Bhd for $10,300, receipt of which is evidenced by another acknowledgment by the second defendant dated 23 September 1986 and witnessed by Yap.

Both cheques were cleared by Public Bank, the $8,500 cheque on 22 September 1986 and the $10,300 cheque on 26 September 1986 as evidenced by the endorsements made by the bank at the back of both cheques.

With the purchase price paid in full, all that remains to be done by the second defendant to effect the transfer of ownership of the car into the plaintiff's name is to pay off MUI Finance. For this purpose he retained possession of the registration card and he also indicated to the plaintiff that as the car was registered with the RIMV Malacca, he also needed the registration card to effect a transfer of the files on the car to the RIMV Selangor after which he would return the registration card to the plaintiff. The second defendant must have paid MUI Finance whatever balance was due under the hire-purchase agreement as the endorsement of MUI's ownership claim in the registration card was subsequently cancelled.

From another endorsement dated 15 October 1986 on the registration card, it is very clear that all files relating to the car were transferred from the RIMV Malacca to the RIMV Selangor and all that remains to be done by the second defendant was to return the registration card to the plaintiff.

This the second defendant failed to do but instead a car dealer called Anthony Joseph from Cantraza Sdn Bhd approached the first defendant and requested them to finance the purchase of the car from the second defendant for one Bok Kok Kai. Having satisfied themselves that there was no prior claim to the car, the first defendant executed a hire-purchase agreement dated 22 October 1986 with Bok, and purchased the car for $21,000, payment for which was made on 24 October 1986 directly to the dealer as evidenced by the plaintiff's bank paying voucher. Accordingly, on 27 October 1986, a change in the name of the registered owner was effected on the registration card with Bok's name inserted as the new registered owner and an endorsement that ownership is claimed by the first defendant.

To determine who has a better title to the car, I consider that the following issues need to be answered.

(1) On 23 September 1986, when the plaintiff paid the second defendant the full purchase price, did he obtain any title to the car?

(2) When the amounts due to MUI Finance were settled in full, did the plaintiff obtain the legal title to the car?
(3) On 24 October 1986, when the first defendant paid $21,000 to the dealer, did they also obtain good title to the car?

It is my considered opinion that on 23 September 1986, when the plaintiff paid the full purchase price of $18,800 to the second defendant, the plaintiff did not obtain any title to the car as at that point of time such title was vested with MUI Finance with whom the second defendant had executed a hire-purchase agreement. As a hirer, the second defendant had no title to the car and he cannot therefore pass any better title to the plaintiff than what he had at that point of time. This is recognized by s 27 of the Sale of Goods Act 1957 and in this respect, s 20 of the same Act is not applicable as it provides for 'an unconditional contract for the sale of specific goods'. In *Benjamin's Sale of Goods*, 'unconditional contract' has been interpreted to mean 'not subject to any condition suspensive of the passing of the property'. On the facts of this case, the presence of the hire-purchase agreement prevented the property passing to the plaintiff and at most whatever rights the plaintiff had on 23 September 1986 was an immediate right to possession.

However, I view the situation differently after the second defendant had paid off MUI Finance and the endorsement of ownership claim by MUI Finance had been cancelled from the registration card. There is evidence that the plaintiff had ascertained from MUI Finance, five days after he had settled the purchase price in full, that the second defendant had paid all sums due to MUI Finance and the cancellation of the endorsement of MUI's ownership claim in the registration card is further confirmation of this fact but unfortunately, it is not clear from the registration card when the cancellation of the endorsement was made. In any event, based on the plaintiff's undisputed testimony, on 28 September 1986 or thereabouts, MUI Finance had relinquished all claims of ownership over the car and this fact is in no way disputed by the first defendant either, as when they had sight of the registration card for the first time which I would place sometime on or before 22 October 1986 when the hire-purchase agreement with Bok was executed, the endorsement of MUI's ownership claim had already been cancelled.

Putting that time sometime between 28 September 1986 and 22 October 1986, and as between the second defendant and MUI Finance, the second defendant had acquired a good title to the car and the title so acquired enured to the benefit of the plaintiff as the purchaser of the car. I am fortified by my conclusion from the authority of *Butterworth* v *Kingsway Motors Ltd*,[1] where the same issue was raised and decided. Thus as from 28 September 1986 or thereabouts after full payment was made and MUI Finance had relinquished all rights of ownership over the car, the plaintiff had acquired ownership of the car and the second defendant's further dealings on the car with Anthony Joseph and the first defendant after 28 September 1986 or thereabouts are therefore illegal. To that end, the first defendant acquired no title or interest over the car when they purchased it on 24 October 1986 and their only remedy, if any, is against the second defendant personally, for the return of the purchase price but as against the plaintiff they cannot claim any right of ownership over the car.

The first defendant has also pleaded estoppel by negligence against the plaintiff by alleging that the plaintiff had been negligent in allowing the second defendant to retain possession of both the car and the registration card thereby clothing the second defendant with the ostensible authority of ownership and by his own conduct the plaintiff is precluded from denying the second defendant's authority to sell the car to the plaintiff. As the first defendant claims to be a bona fide purchaser for value without notice of the plaintiff's prior interest, the plaintiff is estopped from denying the first defendant's title to the car.

Since possession of the car is disputed by both the plaintiff and the first defendant with both of them claiming that they had possession of the car at the time of its respective purchases, oral evidence was led to determine who had possession of the car since 23 September 1986.

The plaintiff's testimony is that after he had settled the purchase price in full on 23 September 1986, the second defendant had allowed him the uninterrupted use of the car until the road tax expired on 1 February 1987 when he could no longer use the car on the road but nonetheless the car had remained in his house to this very day. Efforts on his part to get the second defendant to return the registration card were of no avail and out of desperation he lodged a police report on 27 January 1987.

The credit officer in the first defendant company who had dealt with Anthony Joseph over the purchase of the car could not categorically state whether he had inspected the car, before committing the first defendant to finance its purchase. His evidence is that under normal circumstances, if there had been no inspection, he would have prepared a report to his manager to seek the latter's direction as to whether to waive the company's policy of inspecting the car before purchase. Since the file does not enclose any such report, he had concluded that he must have viewed the car.

Admittedly the transaction happened two years ago but the first defendant should at least support the evidence of their credit officer by calling the dealer, Anthony Joseph, who after all was instrumental in getting the first defendant to finance the purchase of the car. He would be the best person who could testify that he

had produced the car to be inspected by the first defendant but by failing to do so, I can only conclude that his evidence would run contrary to the best interests of the first defendant and to that extent, I invoke the provisions of s 114(g) of the Evidence Act 1950.

Since the evidence of the credit officer is based only on assumptions concluded from what would have happened normally and not based on what had happened, for which I find most unsatisfactory and unacceptable, I can only conclude that the car ceased to be in the possession of the second defendant after 23 September 1986 and that he could not have produced it to Anthony Joseph for inspection by the first defendant. This stands to reason for after all, the plaintiff had already paid the second defendant fully on that date and it would be utterly foolish of the plaintiff not to insist upon the car being delivered to him immediately.

Apart from the plaintiff's testimony, there is also the unchallenged corroborated evidence of his wife and sister that the car had remained in his possession throughout, since counsel for the first defendant chose not to cross-examine them when they were offered to him for cross-examination. From the evidence, I am fully satisfied that the plaintiff had assumed possession of the car since 23 September 1986 until today.

As for the second defendant continuing to retain the registration card after 23 September 1986, the plaintiff has explained that the second defendant needed it to have the endorsement of ownership claim by MUI Finance in the registration card cancelled and also to have the file pertaining to the car transferred from the RIMV office in Malacca to the RIMV office in Selangor.

I have already held that the endorsement of ownership claim by MUI Finance was cancelled sometime between 28 September 1986 and 22 October 1986. The relevant transfer of the file was effected also on 15 October 1986 as evidenced by an endorsement to that effect in the registration card and the second defendant should, had he kept his promise, return the registration card to the plaintiff after 15 October 1986, but he did not do so and this should not be taken against the plaintiff as he had made every effort to get it back from the second defendant as the road tax of the car was due to be renewed on 1 February 1987. When all his efforts failed, he even lodged a police report on 27 January 1987. Thus by his own conduct the plaintiff had not shown that he had been in any way negligent in allowing the second defendant to retain possession of the registration card after he had purchased the car.

The fact that the registration card was still in the second defendant's possession after 23 September 1986 is not disputed but mere possession alone does not give the second defendant the apparent authority to sell the car, as the registration card itself is not a document of title and it cannot be assumed that a person in possession of it is the legal owner of the car. This was so decided in *Central Newbury Car Auctions Ltd* v *Unity Finance Ltd & Anor*,[2] a decision that had been adopted by our own courts in *PP* v *Europe Motors Sdn Bhd*.[3] Furthermore all registration cards of vehicles registered under the Road Traffic Act 1958 carry an endorsement of like effect in Bahasa Malaysia as follows:

> Pemilik berdaftar ialah orang yang menyimpan kereta itu. Ia boleh jadi atau tidak pemilik sah bagi kereta itu.

As such the plaintiff owes no duty of care to the first defendant and neither can it be said that he had been guilty of a breach of such a duty or that he had in any way induced the first defendant to purchase the car. On the contrary, the evidence seems to point to the first defendant being negligent in placing absolute trust in the dealer, who, however, has not been called as a witness to account for his conduct in this transaction. To that end the first defendant have only themselves to blame for the loss suffered when they parted with the purchase price and that being purchasers for value without notice is of no relevance to the facts of this case.

As the plaintiff has pleaded for a number of declaratory reliefs, I accordingly declare:

(1) that the property in the vehicle MP228 was transferred to the plaintiff upon full settlement of the purchase price and the amounts due to MUI Finance; and

(2) that the first defendant has no lawful right, title, interest or claim to the said vehicle.

Consequent to these declarations, I also direct that RIMV Selangor cancel the endorsement of ownership claim by the first defendant on the registration card as well as the name of Bok Kok Kai as the registered owner and in its place substitute the name of the plaintiff as the absolute owner of the vehicle MP228. In this respect the first defendant is to deliver the registration card to the RIMV Selangor to facilitate the necessary cancellations and substitution. Lastly, I also order that the first defendant pay the plaintiff all costs occasioned by this application.

Order accordingly.

Solicitors: *Murthi & Partners*; *Syed Alwi, Ng & Teoh.*

Reported by *Ng Sheau Jiuan*